

Claimant is employed as a Corrections Officer II in charge of an inmate work detail. This job involves transporting inmates into the community to perform various projects and functions. On June 11, 2002, claimant and the inmates in his charge were at Lansing High School to paint the gymnasium. While claimant was "walking in the gymnasium from one

side to the other there was a loud snap" in his left ankle.¹ Claimant went on to say he "was just plainly walking from one side to the other to get to my other group of inmates and severe pain occurred in the ankle at that time."² Claimant was wearing a military style high top boot with a soft canvas leather top and a tennis shoe-type sole. These shoes were required as part of his uniform.³

Claimant admits that he did not trip or stumble or twist his ankle in the moments before his injury nor does he allege a series of microtraumas. In his own words, he was merely walking across the floor to check on the inmates when he heard the "snap." Claimant also admits that before this event, he had "discomfort" in his left ankle for approximately one year. In fact, the family physician's records indicate claimant had been complaining of left foot pain since September 2000.

For a claim to be compensable, claimant must establish personal injury by accident arising out of and in the course of employment.⁴ For a claim to arise "out of" employment, its cause or origin must develop out of the nature, conditions, obligations and incidents of employment.⁵ The intent of this definition is to permit recovery only for those injuries which result from a hazard to which the employee would not have been equally exposed except for the employment.⁶ The facts presented here do not lend themselves to such a finding.

It is not always necessary for an injury to be caused by trauma or some form of physical force before it can be found compensable.⁷ However, when an injury is attributable to a personal condition of the employee and no other factors contribute to the injury, the injury is not compensable.⁸

In 1993 the Kansas Legislature amended K.S.A. 44-508(e) to provide:

¹ P.H. Trans. at 5 and 6.

² *Id.* at 6.

³ *Id.*

⁴ K.S.A. 44-501(a).

⁵ *Kindel v. Ferco Rental, Inc.*, 258 Kan. 272, 899 P.2d 1058 (1995); *Hormann v. New Hampshire Ins. Co.*, 236 Kan. 190, 197, 689 P.2d 837 (1984).

⁶ *Craig v. Electrolux Corporation*, 212 Kan. 75, 79, 510 P.2d 138 (1973).

⁷ *See Demars v. Rickel Manufacturing Corporation*, 223 Kan. 374, 573 P.2d 1036 (1978);

⁸ *Bennett v. Wichita Fence Co.*, 16 Kan. App. 2d 458, 824 P.2d 1001, *rev. denied* 250 Kan. 804 (1992); *Martin v. U.S.D. No. 233*, 5 Kan. App.2d 298, 615 P.2d 168 (1980).

An injury shall not be deemed to have been directly caused by the employment where it is shown that the employee suffers disability as a result of the natural aging process or by the normal activities of day-to-day living.

In workers compensation proceedings the claimant bears the burden of proof to establish his claim. "Burden of proof" is defined in K.S.A. 1996 Supp. 44-508(g) as:

[T]he burden of a party to persuade the trier of facts by a preponderance of the credible evidence that such party's position on an issue is more probably true than not true on the basis of the whole record.

The burden of proof is "on the claimant to establish the claimant's right to an award of compensation and to prove the various conditions on which the claimant's right depends. In determining whether the claimant has satisfied this burden of proof, the trier of fact shall consider the whole record." ⁹

The facts and circumstances surrounding claimant's injury do not remove it from "the normal activities of day-to-day living." Therefore, based upon the record as it currently exists, the Board finds claimant has not met his burden of proving that he sustained personal injury by accident arising out of his employment.

WHEREFORE, it is the finding, decision and order of the Board that the Order of Administrative Law Judge Steven J. Howard dated October 23, 2003, is reversed.

IT IS SO ORDERED.

Dated this _____ day of December, 2003.

BOARD MEMBER

c: Michael J. Haight, Attorney for Claimant
Marcia L. Yates, Attorney for Respondent
Steven J. Howard, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

⁹ K.S.A. 1996 Supp. 44-501(a).